

GAHC010024422019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : SAO/2/2019

SRI UTTAM SINGH
S/O- SRI TRIBHUBAN SINGH
R/O- VILL.- VITOR PARUA, P.O.- NIKAMUL, P.S. TEZPUR, DIST.- SONITPUR,
ASSAM

VERSUS

SMTI. BINU BANIA AND 3 ORS.
W/O- LATE BABULI BANIA
R/O- VILL.- HARIGAON, MOUZA- HOLESWAR, P.S. TEZPUR, DIST.-
SONITPUR, ASSAM

2:SRI DHRUBAJYOTI BANIA
S/O- LATE BABULI BANIA
R/O- VILL.- HARIGAON
MOUZA- HOLESWAR
P.S. TEZPUR
DIST.- SONITPUR
ASSAM

3:SRI SUJIT BANIA
S/O- LATE BABULI BANIA
R/O- VILL.- MAHANAGAR PATH (LALMATI)
P.O. BASISTHA
GUWAHATI- 781029
ASSAM

4:SRI SUBHAS BANIA
S/O- LATE BABULI BANIA
R/O- VILL.- MAHANAGAR PATH (LALMATI)
P.O. BASISTHA
GUWAHATI- 781029

ASSA

Advocate for the Petitioner : MR. P SUNDI

Advocate for the Respondent : MR G CHOUDHURY (R1-R4)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 20.06.2024

This is an appeal filed against an order dated 21.12.2018 passed in Misc. Appeal Case No.03/2018 whereby the application under Order IX rule 13 of the Code of Civil Procedure, 1908 (for short "the Code") which was dismissed by the learned Trial Court was allowed.

2. Taking into account the provisions of Section 104(2) the Code which stipulates that no appeal shall lie against an order passed in an appeal which have already been preferred under Section 104 of the Code, this Court is of the opinion that the instant appeal is not maintainable for which the instant appeal stands dismissed.

3. The interim order dated 01.04.2019 passed in I.A.(Civil) No.1040/2019 stands vacated.

4. This Court further directs the learned Trial Court i.e. the Court of the learned Civil Judge, Sonitpur at Tezpur to proceed with the disposal of Title Suit No.8/2016 in terms with the directions so passed by the learned First Appellate Court in its order dated 21.12.2018 in Misc. Appeal Case No.03/2018.

5. As both the parties are duly represented, they are directed to appear

before the learned Court below on 29.07.2024.

6. The Registry shall forthwith return the LCR to the learned First Trial Court i.e. the Court of the learned Civil Judge, Sonitpur at Tezpur so that on the next date so fixed by this Court, the said records are available. In that regard, the Registry shall also employ the service of a special messenger.

JUDGE

Comparing Assistant